

EXHIBIT B

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

Privacy Office, Mail Stop 0655

September 13, 2011

SENT VIA EMAIL TO: ANTHONY.ELISEUSON@SNRDENTON.COM

Mr. Anthony Eliseuson
SNR Denton US LLP

Re: DHS/OS/PRIV 11-1242

Dear Mr. Eliseuson:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), and your request for a fee waiver, media status, and expedited processing. You are seeking the following information:

1. Documents related to the list of Tier III terrorist organizations: A) A copy of the list of Tier III terrorist organizations kept by USCIS as referred to in *Ahmed v. Scharfen*, No. 08-1680, 2009 U.S. Dist. LEXIS 591, at *21 (N.D. Cal. Jan 7, 2009), as it existed on December 15, 2008, when the government's counsel represented to the court that such a list exist; B) A copy of each subsequent list of Tier III terrorist organizations kept by USCIS after the list referenced in *Ahmed v. Scharfen*; C) All documents produced by the USCIS, DHS, or any other subcomponent of DHS in *Ahmed v. Scharfen*, No. 08-1680 (N.D. Cal.), not including documents that specifically relate only to Plaintiff Saeed Ahmend; and D) Any documents listing or describing organizations which have been designated Tier III terrorist organizations but which have yet to be used as a basis of inadmissibility against an applicant.;

2. All internal reports, memoranda, studies, analyses, policy statements, policy manuals, guides, training materials, or communications, including email, that discuss: A) The Tier III terrorist organization ground of inadmissibility; B) the use of the Tier III terrorist organization ground of inadmissibility; C) The interpretation of implementation of the Tier III terrorist ground of inadmissibility; D) The criteria for determining whether to classify an organization as a Tier III terrorist organization ground of inadmissibility; and E) A justification or reason for applying the Tier III terrorist organization ground of inadmissibility.;

This includes, but is not limited to, the June 1, 2007, Interoffice Memorandum sent by Joseph E. Langlois, Chief, Asylum Division, Office of Refugee, Asylum, and International Operations.

3. A copy of the "general index of the records" required by 5 U.S.C. § 552(a)(2)(E).;

4. A copy of index of indices of documents that contains a title, heading, category, or subcategory that includes documents relating to Tier III terrorist organizations or the Tier III terrorist organization grounds of inadmissibility.;

5. Documents related to the Consolidated Appropriations Act of 2008, Act Dec. 26, 2007, P.L. 110161, Div J, Title VI, § 691(e), 121 Stat. 2365 ("CAA of 2008"): A) Copies of all non-classified portions of each and every report on duress waivers required by the CAA of 200; B) To the extent any portions of

report on duress waivers is being excluded from the foregoing request on the basis that those portions are classified, copies of documents demonstrating the basis for such classification under Executive Order 13526 and 32 C.F.R. 2001.1, et seq.; C) Any documents, communications, or emails relating to each report on duress waivers required by the CAA of 2008; D) Copies of all reports, spreadsheets, memoranda, or other documents providing statistical information regarding "cases considered for and granted exemptions in order for USCIS to comply with Congressional reporting requirements" as set forth in the Interoffice Memorandum dated July 28, 2008, from Michael Aytes to Associate Directors, et. al., (70/21.1.9);

6. Any documents demonstrating that only employees, officers, or officials of DHS, USCIS, or ICE that have classified or security status have been provided with access to the list of Tier III terrorist organizations or other allegedly classified information regarding the Tier III terrorist organization grounds of inadmissibility.;

7. Copies of any other FOIA requests received seeking information regarding the Tier III terrorist organization grounds of inadmissibility or Tier III terrorist organizations policies, procedures, practices, or customs adopted or used by DHS, USCIS, or ICE while they were so employed.;

8. All statements of policy and interpretations that have been adopted by the agency and are not published in the Federal Register relating to Tier III terrorist organization grounds of inadmissibility or Tier III terrorist organizations.;

9. All administrative staff manuals and instructions to staff that affect a member of the public relating to Tier III terrorist organization grounds of inadmissibility or Tier III terrorist organizations.;

10. Copies of any list or index describing statements of policy and interpretations that have been adopted by the Agency and are not published in the Federal Register, and administrative staff manuals and instructions to staff that affect a member of the public created by or in the possession of the Agency, regardless of subject matter.;

11. If any documents have been distributed to any individuals or groups outside the United States government that reflect the names of any groups or organizations that have been listed as Tier III terrorist organizations, please provide all communications with those groups or individuals with regard to those documents. If DHS has a policy with regard to the distribution of documents related to Tier III terrorist organizations, including a policy of when to release to foreign governments, please provide a copy of that policy.;

12. Documents related to the process by which Tier III terrorist organizations are defined: A) Any documents identifying or relating to the research methods or sources permitted, prohibited, or actually relied upon in order to gain the information necessary to determine whether an organization satisfies the definition of a Tier III terrorist organization, including any materials citing sources by name (including, but not limited to, websites) or those concerning the criteria to be used in determining whether a source should be relied upon in deciding whether an organization should be classified as a Tier III terrorist organization; B) Any documents specifically identifying or describing the persons with authority to designate an organization or group as a Tier III terrorist organization; C) Any documents which provide substantive or procedural guidance relating to the designation of an organization as a Tier III terrorist organization, including any documents relating to how a designation is officially recorded or logged; D) Any documents describing or relating to whether or how a decision to classify an organization as a Tier III terrorist organization is reviewed; E) Any documents listing, identifying or describing who is responsible for reviewing, overturning, or rejecting the classification of individual organizations as Tier III terrorist organizations. F. Any documents detailing or relating to total or average length of time spent

in the process of determining whether an organization constitutes a Tier III terrorist organization; G) Any documents detailing or relating to total or average cost or expense incurred in the process of determining whether an organization constitutes a Tier III terrorist organization; H) Any documents regarding the amount of deference that is or should be given to a previous designation.;

13. Any documents reflecting the total number of occasions when the Tier III terrorist organization grounds of inadmissibility has been raised, including any documents reflecting or relating to the number of occasions or frequency with which each service center, local office, or DHS-ICE Office of Chief Counsel has raised the Tier III terrorist organization grounds of inadmissibility.;

14. All completed 212(a)(3)(B) Exemption Worksheets (as promulgated in the Interoffice Memorandum dated July 28, 2008, from Michael Aytes to Associate Directors, et. al.), as well as any documents concerning the completion and submission of these worksheets, including but not limited to, instructional materials, memoranda, lists, reports, directives, correspondence, data, statistics, or internal guidelines, whether in letter or electronic form.;

15. Copies of any reports, memoranda, spreadsheets, or other documents provided by the Agency to any Congressional committee, including the House and Senate Judiciary Committees, or any members or staff thereof, regarding Tier III terrorist organization grounds of inadmissibility or Tier III terrorist organizations.;

16. All documents, communications, and emails between DHS, USCIS, and ICE, and any member of the United States Congress, including both elected Representatives, Senators, their staff, and any committees or subcommittees specifically discussing or referencing the Tier III terrorist organization grounds of inadmissibility or Tier III terrorist organizations.;

17. All documents demonstrating that each and every organization or group listed, defined, labeled or described as a Tier III terrorist organization by DHS, USCIS, or ICE has in fact engaged in, or has a subgroup which engages in, the activities described in subclauses (I) through (VI) of clause (iv) of that Section.;

18. Documents related to Senate Hearing 109-918, Aiding Terrorists: An Examination of the Material Support Statute, May 5, 2004 ("Senate Hearing 109-918"): A) Any lists, index, or indices of the documents provided to the Committee on the Judiciary of the United States Senate, any Senator on the Committee or the staff of any Senator on the Committee relating to Senate Hearing 109-918; B) Copies of all documents provided to the Committee on the Judiciary of the United States Senate, any Senator on the Committee or the staff of any Senator on the Committee relating to Senate Hearing 109918 regarding the Tier III terrorist organization grounds of inadmissibility or Tier III terrorist organizations.;

19. Any email, report, or communication from any DHS, USCIS, ICE, OIG or other DHS subcomponent employee, official, or officer, related to the Tier III terrorist organization grounds of inadmissibility or Tier III terrorist organizations policies, procedures, practices, or customs adopted or used by DHS, USCIS, or ICE.;

20. All documents associated with any investigation or inquiry deemed to be entitled to whistleblower protection or falling under the No FEAR Act, or other similar non-retaliation statute, policy or practice, regarding the Tier III terrorist organization grounds of inadmissibility or Tier III terrorist organizations policies, procedures, practices, or customs adopted or used by DHS, USCIS, or ICE.;

21. All documents listing employees, officers, or officials of DHS, USCIS, or ICE that have been fired, terminated, laid off, or who voluntarily left their employment, who would have had

knowledge regarding the Tier III terrorist organization grounds of inadmissibility or Tier III terrorist organizations policies, procedures, practices, or customs adopted or used by DHS, USCIS, or ICE while they were so employed.;

22. All documents or communications between the DHS Office of Chief Counsel or the ICE Office of Chief Counsel and USCIS service centers or local offices regarding the Tier III terrorist organization grounds of inadmissibility or Tier III terrorist organizations.;

23. Any correspondence, including emails and interoffice memoranda, between DHS and any other representative of the United States Government (e.g., other federal agencies, Members of Congress, etc.) and between DHS and any person or entity other than a representative of the United States Government (e.g., private citizens, private companies, foreign citizens, foreign governments) regarding the substantive criteria or procedural guidelines used to determine whether an organization constitutes a Tier III terrorist organization.;

24. Any documents relating to communication with the media concerning the Tier III terrorist organization grounds of inadmissibility or Tier III terrorist organizations, including internal communications regarding media inquiries.;

25. To the extent the Agency invokes "unusual circumstances," under Section 552(a)(6)(B)(iii)(III) in response to these requests, all documents, including, but not limited to, emails and communications, between the Agency and any other subcomponent or agency relating to these requests.; and

26. To the extent the Agency cites a backlog of FOIA requests to attempt to justify a delay in processing these requests, all documents demonstrating the Agency is making reasonable progress in reducing its backlog of pending requests, and the Agency's specific efforts in that regard.

Your request was dated and received in this office on September 2, 2011.

In a telephone conversation with James Holzer and a member of your staff on September 9, 2011, your firm was informed that the acknowledgement letter dated September 9, 2011, was sent in error.

As it related to your request for expedited treatment, your request is denied.

Under the DHS FOIA regulation, expedited processing of a FOIA request is warranted if the request involves "circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to life or physical safety of an individual," 6 C.F.R. § 5.5(d)(1)(i), or "an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information," 6 C.F.R. § 5.5(d)(1)(ii). Requesters that seek expedited processing must submit a statement explaining in detail the basis for the request, and that statement must be certified by the requester to be true and correct. 6 C.F.R. § 5.5(d)(3).

Your request for expedited processing is denied because you do not qualify for either category. You failed to demonstrate a particular urgency to inform the public about the government activity involved in the request beyond the public's right to know about government activity generally. Your letter was conclusory in nature and did not present any facts to justify a grant of expedited processing under the applicable standards.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to

respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, DHS will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

As it relates to your fee waiver request, your request will be held in abeyance pending the quantification of responsive records. The DHS FOIA Regulations, 6 CFR § 5.11(k)(2), set forth six factors to examine in determining whether the applicable legal standard for a fee waiver has been met: (1) Whether the subject of the requested records concerns "the operations or activities of the government;" (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities; (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons; (4) Whether the contribution to public understanding of government operations or activities will be "significant;" (5) Whether the requestor has a commercial interest that would be furthered by the requested disclosure; and (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor. If any responsive records are located, we will consider these factors in our evaluation of your request for a fee waiver.

In the event that your fee waiver is denied, we shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to media requestors. As a media requestor you will be charged 10-cents a page for duplication, although the first 100 pages are free. You will be promptly notified once a determination is made regarding your fee waiver request.

I have determined that, if responsive records exist, they may be under the purview of the DHS Office of the General Counsel (OGC), the U.S. Immigration and Customs Enforcement (ICE), DHS Office of the Inspector General (OIG), and the U.S. Citizenship and Immigration Services (USCIS). Therefore, I am referring your request to the FOIA Officer for OGC, Fernando Pineiro, FOIA Officer for ICE, Catrina Pavlik-Keenan, FOIA Officer of OIG, Katherine Gallo, and the FOIA Officer for USCIS, Jill Eggleston, for processing and direct response to you. You may contact those offices in writing at:

U.S. Department of Homeland Security
Office of the General Counsel
Washington, D.C. 20528
202-282-9822

U.S. Immigration and Customs Enforcement
500 12th Street, SW, Stop 5009
Washington, DC 20563-5009
202-732-0600

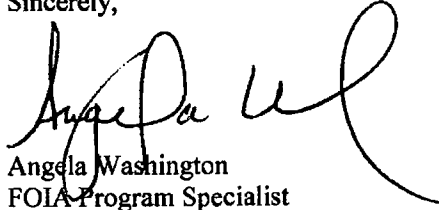
U.S. Department of Homeland Security
, Office of the Inspector General
245 Murray Drive, Bldg. 410, Mail Stop - 2600
Washington, D.C. 20528-0001
202-254-4001

U.S. Citizenship and Immigration Services
National Records Center, FOIA/PA Office
P.O. Box 648010
Lee's Summit, MO 64064-8010
800-375-5283

In addition, this office will search the DHS Executive Secretariat for any responsive records. If there are any additional DHS components that you would like us to search, please advise this office. A list of DHS components may be found on our website at: http://www.dhs.gov/xfoia/Copy_of_editorial_0318.shtm. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **DHS/OS/PRIV 11-1242**. Please refer to this identifier in any future correspondence. You may contact this office at 866-431-0486.

Sincerely,



Angela Washington
FOIA Program Specialist